



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

Ms. Mary Jane Ray
Paralegal, General Counsel Division
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-1077

Dear Ms. Ray:

You ask this office to reconsider our rulings in Open Records Letter Nos. 97-2507 (1997) and 98-0014 (1998). Your request for reconsideration was assigned ID# 115117.

The City of Austin (the "city") received two different requests for information, including psychological evaluations of each of the requestors. In Open Records Letter Nos. 97-2507 (1997) and 98-0014 (1998), this office concluded that the psychological evaluations are confidential under section 611.002(a) of the Health and Safety Code because they are "records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional" under section 611.002(a) of the Health and Safety Code. We further ruled, however, that because the requestor in each case is a "patient" for purposes of section 611.0045, he is entitled to access to the submitted records relating to his psychological evaluation, subject to the conditions of section 611.0045 of the Health and Safety Code.

In your request for reconsideration, you contend that the city is the client for purposes of Chapter 611 of the Health and Safety Code and the job applicants, who are the subjects of the psychological evaluations, are not patients because they are not receiving any treatment nor have they entered into a client-professional relationship. You have also provided to this office a letter from the city's Manager of Psychological Services, Dr. Rick Bradstreet, claiming that job applicants are not patients for purposes of section 611.002(a), and articulating other reasons for withholding the evaluations from the requestors. Dr. Bradstreet does not raise any other confidentiality provisions or other substantive exceptions to disclosure under the Open Records Act. We address your arguments in turn.

First we address your arguments that section 611.002(a) renders the evaluations confidential because the city is the client. Section 611.002(a) provides confidentiality for "records of the identity, diagnosis, evaluation, or treatment of a *patient*." If a job applicant is not a patient for purposes of this provision, then the confidentiality provision would not apply in this instance. We believe that, in order for the provision to render these psychological evaluations confidential, there must be a patient/professional relationship. Although you state that the city is the client for purposes of this provision, the confidentiality provision is not written in terms of the relationship between a client and a professional, but in terms of a patient and a professional. Thus, without a patient, there is no relationship and thus, no confidentiality for records created by the professional in this capacity.

We next address Dr. Bradstreet's arguments that a job applicant is not a patient because no treatment is rendered and no confidential patient/professional relationship is entered into when job applicants are subjected to a psychological evaluation by a city professional. As we stated in Open Records Letter No. 98-0014 (1998), section 611.001(1) includes in its definition of a "patient" for purposes of chapter 611, someone who is "interviewed by a professional for diagnosis, *evaluation*, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction." (Emphasis added.) From the information provided, it appears that the doctors who interviewed the applicant are "professionals" as defined by section 611.001. Furthermore, the job applicants were interviewed for the purpose of evaluating their emotional and mental condition or fitness to be a fire fighter. Thus, the job applicants are patients for purposes of this confidentiality and access provision in chapter 611 of the Health and Safety Code.¹ We, therefore, affirm Open Records Letter Nos. 97-2507 (1997) and 98-0014 (1998).

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

¹Even if we assume that a job applicant is not a patient, the city does not raise any other substantive exception to disclosure, other than section 552.122, to withhold the psychological evaluations from the requestors. As we have concluded that the city may not withhold the evaluations under section 552.122, if chapter 611 is also inapplicable, we have no other substantive basis on which to conclude that the city may withhold the evaluations from the requestors in this instance.

Ref.: ID# 115117

cc: Mr. Jason Huskins
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